

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

App. No.: 10/524,315                                  Att'y Docket: 03-497  
Filing Date: February 9, 2005                          Conf No.: 6460  
Inventor(s): Bernard A. McNulty                          Group Art Unit: 1794  
Assignee: Pastura Foods, LLC                              Examiner: Anthony J. Weier  
Title: MICROWAVE EGG PASTEURIZATION METHOD AND APPARATUS

Correspondence Address:  
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RESPONSE TO ELECTION REQUIREMENT

Mail Stop Amendment  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Dear Sir:

This is in response to the Office Action mailed August 1, 2008, for which a response is due on September 1, 2008.

Election

Election was required as follows:

Species A) Method of preferentially cooling the egg white and preferentially heating the yolk;

Species B) Method of preferentially heating the yolk and then preferentially heating albumen.

Applicant elects Species B with traverse. The exact nature of the requirement is unclear. The Office asserted a claim breakdown as: claims 1-14 being generic; claims 15&16 directed to Species A; and claims 17-14 directed to Species B. The requirement is unclear for several reasons. First, claim 15 does not require that heating of the yolk be "preferential". Second, claim 15 does specify heating of the white. Furthermore, the Office has not further characterized the species with limitations (e.g., potentially negative limitations) that would render them mutually

exclusive. It does not, for example, identify the absence of a preferential cooling step before the heatings of Species B. The Office does not, also, include a limitation against there being two distinct heating steps or mechanisms in Species A.

With this in mind, it appears the Office has correctly treated independent apparatus claim 1 and its dependent apparatus claims 2-11 as generic as well as independent 112(6) apparatus claim 12 and its dependent apparatus claims 13&14 as generic. In the apparent interpretation, however, dependent method claims 15&16 would also be generic as would independent method claims 17&23 and their respective dependent claims. With, however, the negative limitations identified above and not included by the Office, the Office's assignment of dependent claims 15&16 to Species A and claims 17-24 to Species B would be correct.

Traverse is on the grounds that examination of all the claims would not present an undue burden. It is believed the species are sufficiently related so as to be searchable and examinable in a single application. Accordingly, if the requirement is withdrawn, claims 1-24 will be examined. If not withdrawn, claims 1-14 and 17-24 will be examined.

Accordingly, Applicant submits that all claims are in condition for allowance. Please charge any fees or deficiency or credit any overpayment to our Deposit Account of record.

Respectfully submitted,

By /William B. Slate, #37238/

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Date: August 12, 2008